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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-eighth session

SUMMARY RECORD (PARTIAL)* OF THE 579th MEETING

Held at the Vienna International Centre, Vienna,
on Wednesday, 24 May 1995, at 9.30 a.m.

Chairman: Mr. GOH (Singapore)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 9.40 a.m.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW (*continued*)

Report of the drafting group (*continued*) (A/CN.9/XXVIII/CRP.5 and Add.1 and 2)

1. **Mr. BURMAN** (United States of America) said that his delegation withdrew the comments it had made at the previous meeting casting doubt on the language used in the report of the drafting group concerning article 10, paragraph (2). After verification, it was clear that the wording it had chosen was correct. The United States of America still had reservations as to the appropriateness of the language, but would take up that issue at the next session.

2. **Mr. SORIEUL** (Secretariat), referring to the suggestion made at the previous meeting that it might not be possible to adopt the drafting group's report and that all issues would have to be re-discussed in 1996, said that the drafting group had not sought to discuss substantive issues but simply to make sure that the Commission's decisions were reflected faithfully in the text. If the report of the drafting group, with any amendments that might be made, were not adopted, all the work done at the present session would have been wasted. It was important to adopt a text in order to provide a basis for discussion at the next session. The text submitted by the drafting group was, of course, not perfect and did not resolve all issues, but the Commission could if it so wished reopen the discussion at the next session, especially in regard to definitions.

3. **Mr. RENGER** (Germany) said that, following the clarification given by the Secretariat, he felt easier about the situation and able to accept the text as a basis for discussion at the next session. However, he strongly supported the views expressed by the representative of Mexico at the previous meeting. He did not question the work of the drafting group, but Germany could not agree that a final decision had been taken on the adoption of the text, because it had serious objections to article 11 and had put forward other proposals. Germany would not be able to accept the text if further discussion were excluded. It accepted the report of the drafting group as reflecting the discussions in the Commission, but reserved its right to reopen discussion on substantive issues at the next session.

4. **Mr. SORIEUL** (Secretariat) said that there appeared to be two issues. Firstly, the Commission had to decide whether the report of the drafting group faithfully reflected the decisions taken by the Commission, since there could be no doubt that decisions had indeed been taken. The second question was to establish whether, at the next session, discussion could be reopened on an article or articles in the draft text. He pointed out, in regard to article 11, that certain parts of the text had been enclosed in square brackets. In other words, they had not been adopted and would therefore be discussed at the next session.

5. **The CHAIRMAN** pointed out that he had given an assurance that the issues could be re-discussed. He suggested that article 11 be adopted for the time being. In his view, a full discussion of article 11 would be necessary, since a number of delegations were unhappy with certain provisions.

6. **Mr. GRIFFITH** (Australia) said that the function of the drafting group was simply to express the decisions taken by the Commission. It had no right to decide matters of policy or substance. In his view, it had carried out its task faithfully and the proposed text should be adopted. In regard to the reopening of the discussion on certain issues that had been discussed at length in the Working Group, representatives were clearly entitled to do so if they wished. However, it was important to achieve a consensus that resulted in a text on EDI. Australia would be extremely concerned if no result were achieved at the twenty-ninth session. In that case, UNCITRAL would have to admit failure and vacate the field of EDI. He recognized the

(*Mr. Griffith, Australia*)

existence of problems in regard to article 11 and realized it would need to be re-discussed, especially after re-examination of the definitions in article 2. In his view, the reluctance of certain representatives to adopt the report arose from confusion between two separate issues, the report as a true reflection of what had been agreed by the Commission and the fact that certain countries had reservations in regard to certain questions which they would like to be re-discussed at the next session.

7. **Mr. SHIMIZU** (Japan) did not question the accuracy of the report by the drafting group and had no objection to its being adopted, but thought that article 11 (3) (a) (ii) should be in square brackets, since, in his recollection, the indicative vote taken on that subparagraph had been evenly divided.

8. **The CHAIRMAN** said that article 11 (3) (a) (ii) had been correctly retained following a decision by the Commission. He hoped that the lack of square brackets could be accepted on the understanding that the question would be re-discussed at the next session.

9. **Mr. ABASCAL ZAMORA** (Mexico) said that the proposal he had made at the previous meeting had not been intended to delay decisions or raise problems regarding the work of the drafting group. As he had stated at the previous meeting, representatives not in fact present at the meeting concerned might be unsure as to whether a text had been agreed or not. What he wanted was a clear indication as to whether the decisions taken by the Commission in regard to the drafting group's report would be binding at future sessions of the Commission. He wondered whether it would be possible to discuss in the future not only certain articles but the entire text submitted by the drafting group.

10. **The CHAIRMAN** emphasized that the present task of the Commission was to approve the report of the drafting group, and in so doing simply to make sure that the decisions taken by the Commission had been faithfully reflected in the text. It should not seek to reopen the discussion on policy. That could be done at the next session, since the Commission had not in fact adopted a model law at the present one.

11. **Mrs. BRELIER** (France) said that, after the explanation given by the Secretariat, she was willing to accept the report of the drafting group so long as it would be possible for the Commission to reopen the discussion at a future date.

12. She wished to suggest one minor amendment, namely, to replace the word "*initiateur*" in article 6 (1) (a) and elsewhere by the word "*expéditeur*", which was the only word that would be comprehensible in French.

13. **Mr. SORIEUL** (Secretariat) said that the proposed amendment would not affect the English version of the text.

14. **Ms. ZHANG Yuejiao** (China) said that the wording of article 10 (2) in the report of the drafting group was not the wording that she had understood the Commission to approve. The paragraph should be amended to read: "Paragraph (1) does not affect any right that may exist to modify by agreement any provision referred to in chapter II permitted by rule of law", or alternatively "Paragraph (1) does not affect any right that may exist to modify by agreement any rule of law which is not mandatory referred to in chapter II". The Commission had agreed that any mandatory rule of law in chapter II would not be affected.

(*Ms. Zhang Yuejiao, China*)

15. Article 11 (3) (a) (ii) should be put into square brackets, as previously agreed. As to how the result of the session should be reflected in the report, she suggested that the wording "The present text basically reflects the result of the discussion during the session" would allow some leeway for delegations to come up with new wording at the next session.

16. **Mr. HERRMANN** (Secretary of the Commission) said that the Secretariat had checked its notes on article 10 (2) and found that the wording in the drafting group's report did correspond to the wording suggested by the United Kingdom representative. The question of whether the provision could apply to a non-mandatory rule of law was one of substance, whereas the Commission was now adopting the report of the drafting group and merely had to check whether the group had implemented its decision faithfully.

17. **The CHAIRMAN** endorsed those views and pointed out that the Commission should not take over the functions of the drafting group. He urged delegations not to submit proposals of substance. According to his own notes, article 10 (2) had indeed been adopted.

18. **Mr. BURMAN** (United States of America) agreed with the Secretary, the Chairman and the representative of Australia. Any clarification of the language would have to be done at the next session. However, he hoped that the discussion on the whole text would not be reopened at the next session and that delegations would raise only those points on which they had reservations or strong differences of opinion.

19. **Mr. BONELL** (Italy) agreed in principle with the remarks of the representatives of Australia and the United States, but observed that each session of the Commission followed its own course. In any case, a number of delegations believed that not just the two pending articles, but the whole structure of the Model Law required further consideration, and many provisions were interlinked.

20. His delegation had full confidence that the Commission's proceedings had been properly recorded by the Secretariat and agreed that the present meeting was not the right place to reopen discussion on the matter of substance raised by the representative of China. That also applied to the point raised by the representative of France.

21. **Mr. CHOUKRI SBAI** (Observer for Morocco) suggested that the Commission should concentrate on the report of the drafting group. The Commission had not concluded its debate on the Model Law and would have a chance to discuss it again at its next session.

22. **Mr. CHAY** (Singapore) suggested that the Commission should decide expressly whether at the next session all the articles might be open for discussion both as to substance and drafting, or whether the discussion should be confined to certain articles. Leaving the matter open would pave the way to reopening the discussion on every single article.

23. Since a decision had been made to adopt articles 1, 3 to 9 and 12, with amendments faithfully reproduced by the drafting group, he suggested that at the next session the discussion on substance be restricted to articles 10 and 11, discussion on the other articles being confined to drafting matters.

24. **The CHAIRMAN** pointed out that it was not for the present session to tell the next session what it could or could not do. He himself shared the view of the German and United States representatives that some of the provisions of the Model Law were not very satisfactory and should be reviewed.

(*The Chairman*)

25. He invited the Commission to adopt the report of the drafting group, amended in the French version through the replacement of "*initiateur*" by "*expéditeur*".

26. **Mr. PELICHET** (Observer for the Hague Conference on Private International Law) said that the French proposal involved a question of substance. "*Expéditeur*" and "*initiateur*" were not at all the same in the context of electronic data interchange. He therefore proposed that the French version of the text should be maintained, even if that would mean reopening the discussion at the next session.

27. **Ms. ZHANG Yuejiao** (China) asked for confirmation that delegations would have a chance to discuss the points they wished at the next session.

28. **Mr. GRIFFITH** (Australia) reminded members of the Australian proposal that article 9 (2) be reworded as follows: "An obligation to retain documents, records or information ..." to make it conform with the wording in article 9 (1). That was a drafting point but one that had to be decided by the Commission.

29. **Mrs. BRELIER** (France) said that her amendment was not a matter of translation but of the correct use of the French language.

30. **Mr. CHOUKRI SBAI** (Observer for Morocco) considered that the word "*initiateur*" (originator), a new term relating to the creation, storage or transmission of a data message, was broader than "*expéditeur*" (sender).

31. **The CHAIRMAN** suggested that the text should remain as it stood, that the matter raised by the French representative should be discussed at the next session, and that the Australian proposal on article 9 (2) should be adopted.

32. *It was so agreed.*

33. *The report of the drafting group, as amended, was adopted.*

The discussion covered in the summary record ended at 10.35 a.m.